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11 UNITED STATES DISTRICT COURT
12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
13 SOUTHERN DIVISION
14

15 SERHAT ERTUGRUL,)

16 *Petitioner,*)

17 v.)

18 MARKWAYNE MULLIN, in his official capacity)
19 as Secretary of the Department of Homeland)
20 Security; TODD BLANCHE, in his official)
21 capacity as Attorney General of the United)
22 States; TODD LYONS, in his official)
23 capacity as Acting Director and Senior)
24 Official Performing the Duties of the)
25 Director of U.S. Immigration and Customs)
26 Enforcement; ALANNA OW, in her)
27 official capacity as the San Diego Field Office)
28 for U.S. Immigration and Customs)
Director Enforcement, Enforcement and Removal)
Operations; CHRISTOPHER J. LAROSE, in)
his official capacity as Warden of Otay Mesa)
Detention Center,)
Respondents.)
_____)

Case No. '26CV3442 BJC JLB

PETITION FOR WRIT OF
HABEAS CORPUS

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

1. Petitioner, SERHAT ERTUGRUL, by and through undersigned counsel, respectfully petitions this Honorable Court for a *writ of habeas corpus* pursuant to 28 U.S.C. § 2241 to challenge his ongoing and unlawful civil immigration detention by the United States Department of Homeland Security (“DHS”) and its agents. Petitioner is a 24-year-old Turkey citizen currently detained at the Otay Mesa Detention Center in the Southern District of California-Southern Division.
2. Petitioner entered the United States on April 15, 2023, near San Ysidro, California, sought protection from persecution, and was placed into full removal proceedings. He is not subject to mandatory detention under any provision of the Immigration and Nationality Act.
3. On May 24, 2026, Petitioner was arrested by Immigration and Customs Enforcement (“ICE”) during an operation conducted in a public area; Petitioner was detained and placed in immigration detention while his removal proceedings are ongoing.
4. Although Petitioner may seek bond redetermination under existing procedures, such efforts are futile due to current immigration policies and precedents, including the Immigration Court's lack of jurisdiction for meaningful custody review pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)¹. These policies impose blanket restrictions,

¹ The Government’s reliance on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), is misplaced. The decision was issued in a bond appeal that (as argued in Respondent’s motion to reconsider) was moot before publication because the respondent was already subject to a final removal order—making the Board’s choice to issue a published merits ruling procedurally defective and, at minimum, of diminished persuasive value. *See* Exhibit D. *See also Matter of Valles*, 21 I&N Dec. 769, 773 (BIA 1997) (bond appeal rendered moot by subsequent custody redetermination); *Matter of Luis*, 22 I&N Dec. 747, 753 (BIA 1999) (Board may dismiss as moot, “as a matter of prudence,” when a controversy is deprived of practical significance).

In any event, *Yajure Hurtado* is *ultra vires* of the Board’s delegated authority because it effectively rewrites binding Attorney General custody regulations—without rulemaking—by converting a narrow, regulation-based “arriving alien” bond bar into a sweeping prohibition for virtually all noncitizens charged as present without admission. Compare 8 C.F.R. §§ 1236.1(d)(1), 1003.19(h)(2)(i)(B) (IJ bond jurisdiction before a final order; categorical bar limited to “arriving aliens” and other enumerated classes) with 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (final interim rule explaining that “inadmissible aliens, except for arriving aliens, have available to them bond

preclude individualized assessments, and ignore case-specific changes, rendering any redetermination illusory and likely to be denied without substantive consideration. Consequently, Petitioner remains in indefinite detention without a genuine opportunity for release, violating procedural due process and highlighting systemic flaws for similarly situated individuals.

5. Petitioner is subject to pre-final order of removal detention under 8 U.S.C. § 1226(a). Noncitizens detained under section 1226(a) are subject to discretionary detention and may request a change of custody redetermination, commonly known as a bond hearing, before an Immigration Judge.

6. Despite this statutory framework, DHS has taken the position that—based on *Matter of Yajure Hurtado*—the Immigration Court lacks jurisdiction to conduct a bond hearing in Petitioner’s case, thereby depriving him of any meaningful opportunity to seek release and leaving him detained without a constitutionally adequate custody determination.

7. As a result of this categorical precedent, Petitioner now faces prolonged and potentially indefinite detention without any meaningful opportunity for an individualized custody review. Petitioner is currently seeking Form I-589, Application for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”), and remains eligible for discretionary release under 8 U.S.C. § 1226(a). Despite his pending claims for

redetermination hearings before an immigration judge”). The Board has repeatedly stated that it lacks the authority to invalidate or disregard Attorney General regulations. *See, e.g., Matter of Akram*, 25 I&N Dec. 874, 875 (BIA 2012). Basic administrative law likewise forbids an agency from accomplishing a de facto amendment of a binding legislative rule through adjudication rather than notice-and-comment rulemaking. *See, e.g., Marseilles Land & Water Co. v. FERC*, 345 F.3d 916, 920 (D.C. Cir. 2003).

Nor does *Yajure Hurtado* warrant deference in federal habeas proceedings. Under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394, 413 (2024), courts must exercise independent judgment and may not defer to an agency interpretation simply because a statute is ambiguous. Federal courts evaluating the same detention theory have thus declined to treat *Yajure Hurtado* as controlling or persuasive and have ordered bond hearings under INA § 236(a), 8 U.S.C. § 1226(a).

1 relief and eligibility for discretionary release under 8 U.S.C. § 1226(a), DHS continues to
2 detain him without providing a constitutionally sufficient bond hearing before a neutral
3 adjudicator empowered to grant release.

4 8. Petitioner's continued detention without a bond hearing violates Petitioner's Fifth
5 Amendment Due Process rights and the Immigration and Nationality Act ("INA"). DHS's
6 position—endorsed through reliance on *Matter of Yajure Hurtado*—has eliminated bond
7 jurisdiction under § 1226(a) and resulted in prolonged civil detention without adequate
8 procedural safeguards.

9
10 9. Petitioner seeks immediate release, or in the alternative, an order directing Respondents to
11 provide him with a constitutionally adequate bond hearing under 8 U.S.C. § 1226(a) before
12 a neutral decisionmaker with authority to grant release. For the foregoing reasons, the Court
13 should grant habeas relief and direct Respondents to release Petitioner, or in the alternative
14 promptly provide him with a constitutionally adequate bond hearing within seven (7) days.
15

16 17 **FACTUAL BACKGROUND**

18 10. Petitioner SERHAT ERTUGRUL is a 24-year-old Turkey citizen and national. Petitioner
19 has no criminal convictions and no history of violence or dangerous behavior. He has
20 consistently demonstrated compliance with immigration authorities throughout his
21 immigration proceedings.
22

23 11. Petitioner entered the United States on April 15, 2023, near San Ysidro, California, and he
24 was placed into full removal proceedings. Petitioner was determined to be a citizen of
25 Turkey and did not possess valid documents permitting entry into the United States.

26 12. Following his entry, Petitioner was issued a Notice to Appear and placed into removal
27 proceedings under section 240 of the Immigration and Nationality Act. He thereafter filed
28

1 applications for asylum, withholding of removal, and protection under the Convention
2 Against Torture, and has remained in compliance with all requirements of his immigration
3 case.

4
5 13. On May 24, 2026, Petitioner was arrested by Immigration and Customs Enforcement
6 (“ICE”) during an operation conducted in a public area. Petitioner was detained at Otay
7 Mesa Detention Center, located at 7488 Calzada De La Fuente, San Diego, CA 92154,
8 where he has remained detained while his removal proceedings are ongoing.

9
10 14. Although Petitioner may seek bond redetermination under existing procedures, such efforts
11 are futile due to current immigration policies and precedents, including the Immigration
12 Court's lack of jurisdiction for meaningful custody review pursuant to *Matter of Yajure*
13 *Hurtado*, 29 I&N Dec. 216 (BIA 2025). These policies impose blanket restrictions, preclude
14 individualized assessments, and ignore case-specific changes, rendering any
15 redetermination illusory and likely to be denied without substantive consideration.
16 Consequently, Petitioner remains in indefinite detention without a genuine opportunity for
17 release, violating procedural due process and highlighting systemic flaws for similarly
18 situated individuals.

19
20 15. Petitioner is currently detained at Otay Mesa Detention Center, within the Southern District
21 of California-Southern Division. He has remained in continuous civil immigration detention
22 since May 24, 2026, despite having no criminal convictions, no reported disciplinary
23 infractions while in custody, and no evidence suggesting he poses a danger to the
24 community or a flight risk.

25
26 16. Petitioner has fully complied with all requirements of his removal proceedings. Petitioner
27 is currently seeking Form I-589, Application for asylum, withholding of removal, and
28

1 protection under the Convention Against Torture. His removal proceedings remain pending
2 before the Immigration Court.

3 17. Petitioner's ongoing detention—without any opportunity for an individualized custody
4 determination and based solely on a categorical jurisdictional ruling—has resulted in
5 prolonged and potentially indefinite civil confinement. His detention under restrictive,
6 penal-like conditions, despite his compliance with immigration authorities and lack of
7 criminal convictions, violates fundamental principles of due process and statutory
8 protections under the Immigration and Nationality Act.

9
10 18. Petitioner has now been held in civil immigration detention since May 24, 2026, without
11 any meaningful mechanism to seek release, notwithstanding his eligibility for
12 discretionary detention under 8 U.S.C. § 1226(a).

13 JURISDICTION

14
15 19. This action arises under the Constitution of the United States and the Immigration and
16 Nationality Act (“INA”), 8 U.S.C. § 1101 et seq. This Court has jurisdiction under 28 U.S.C.
17 § 2241 because Petitioner challenges the legality of his ongoing civil immigration detention
18 and seeks relief that is within the traditional scope of habeas corpus. Jurisdiction also lies
19 under 28 U.S.C. § 1331, as this Petition raises federal questions arising under the
20 Constitution, laws, and treaties of the United States. The Suspension Clause of the United
21 States Constitution further guarantees Petitioner's right to seek habeas corpus review where
22 no other adequate remedy exists.

23
24
25 20. The Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et seq., the
26 Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. §
27 1651. Congress has preserved judicial review of challenges to immigration detention,
28

1 including claims raising statutory and constitutional questions. See, e.g., *Nielsen v. Preap*,
2 139 S. Ct. 954, 961–62 (2019); *Jennings v. Rodriguez*, 583 U.S. 281, 138 S. Ct. 830 (2018)
3 (distinguishing reviewable legal and constitutional claims from unreviewable discretionary
4 determinations under 8 U.S.C. § 1226(e)).

5
6 21. Federal district courts have jurisdiction to hear habeas corpus claims brought by noncitizens
7 challenging the lawfulness of their immigration detention. See *Demore v. Kim*, 538 U.S.
8 510, 516–17 (2003) (recognizing habeas jurisdiction over challenges to immigration
9 detention); *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001) (same).

10 22. Although 8 U.S.C. § 1226(e) bars review of the Attorney General’s discretionary judgments
11 regarding the release or detention of noncitizens, it does not preclude judicial review of
12 questions of law or constitutional claims arising from immigration detention. Petitioner
13 does not ask this Court to second-guess a discretionary bond determination. Rather, he
14 challenges the Department of Homeland Security’s legal authority to deny him any bond
15 hearing and to continue detaining him without a constitutionally adequate individualized
16 custody determination, based on a categorical jurisdictional bar. Such claims fall squarely
17 within the scope of habeas review. The Supreme Court has long recognized that federal
18 courts retain habeas jurisdiction to review the statutory and constitutional bases of
19 immigration detention notwithstanding jurisdiction-stripping provisions, as such review lies
20 at the core of the Great Writ. See *Demore v. Kim*, 538 U.S. at 516–17; *Zadvydas v. Davis*,
21 533 U.S. at 687–88; see also *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (plurality op.)
22 (habeas remains "the essential remedy to safeguard a citizen's right" against unlawful
23 executive detention).
24
25

26 23. No petition for a *writ of habeas corpus* has previously been filed in any court regarding
27 Petitioner.
28

VENUE

24. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973), venue lies in the United States District Court for the Southern District of California, Southern Division, the judicial district in which Petitioner is currently detained and where his immediate custodian at the Otay Mesa Detention Center exercises control over his confinement.

25. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims—including Petitioner’s detention and the denial of bond jurisdiction—occurred within the Southern District of California, Southern Division.

PARTIES²

26. Petitioner Serhat Ertugrul is a citizen and national of Turkey who has been in immigration detention since May 24, 2026. Petitioner was arrested by ICE during an operation conducted in a public area and was taken into custody at that time. Although Petitioner may seek bond redetermination under existing procedures, such efforts are futile due to current immigration policies and precedents, including the Immigration Court's lack of jurisdiction for meaningful custody review pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA

² In *Rumsfeld v. Padilla*, the Supreme Court addressed the identity of the proper respondent to a § 2241 habeas petition filed by a U.S. citizen challenging his detention as an enemy combatant. 542 U.S. 426 (2004). The Court held that the only appropriate respondent for a traditional habeas corpus petition involving a "core challenge" to "present physical confinement" is the individual's "immediate custodian," meaning the person in charge of the facility where the individual is being held *Id.* at 435. In that case, the immediate custodian was the commanding officer in charge of the naval brig where the petitioner was physically held. *Id.* at 442. The Supreme Court also made it clear that it would not address who the proper respondent would be for a petition filed by a noncitizen "detained pending deportation." The Court noted a disagreement among different circuit courts regarding whether the Attorney General is a proper respondent to a habeas petition in such cases and stated, "Because the issue is not before us today, we again decline to resolve it" *Id.* at 435 n.8.

1 2025). These policies impose blanket restrictions, preclude individualized assessments, and
2 ignore case-specific changes, rendering any redetermination illusory and likely to be denied
3 without substantive consideration. Consequently, Petitioner remains in indefinite detention
4 without a genuine opportunity for release, violating procedural due process and highlighting
5 systemic flaws for similarly situated individuals. Petitioner entered the United States on or
6 about April 15, 2023, and his removal proceedings remain pending.
7

8 27. Respondent **Markwayne Mullin** is sued in his official capacity as the Secretary of the U.S.
9 Department of Homeland Security. In this capacity, Respondent is responsible for the
10 implementation and enforcement of the Immigration and Nationality Act, and oversees U.S.
11 Immigration and Customs Enforcement, the component agency responsible for Petitioner's
12 detention and custody. Respondent is a legal custodian of Petitioner.
13

14 28. Respondent **Todd Blanche** is sued in his official capacity as the Attorney General of the
15 United States and the senior official of the U.S. Department of Justice ("DOJ"). In that
16 capacity, he has the authority to adjudicate removal cases and to oversee the Executive
17 Office for Immigration Review ("EOIR"), which administers the immigration courts and
18 the BIA. Respondent is a legal custodian of Petitioner.
19

20 29. Respondent **Todd Lyons** is sued in his official capacity as the Acting Director of U.S.
21 Immigration and Customs Enforcement ("ICE"). In this capacity, Respondent is a legal
22 custodian of Petitioner and possesses authority over ICE detention policies, including the
23 authority to release Petitioner from custody. He is sued in his official capacity.
24

25 30. Respondent **Alanna Ow** is sued in her official capacity as the Field Office Director of ICE's
26 Enforcement and Removal Operations ("ERO") for the San Diego Field Office. As such,
27 Respondent is responsible for overseeing Petitioner's detention and custody within the San
28

1 Diego Field Office Area of Responsibility and exercises authority over Petitioner's
2 continued confinement. She is a legal custodian of Petitioner.

3 31. Respondent **Christopher J. LaRose** is the Warden of the Otay Mesa Detention Center in
4 Calzada De La Fuente, San Diego, CA, the facility where Petitioner is currently detained.
5 This Respondent has immediate physical custody of Petitioner and is sued in his official
6 capacity.
7

8 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

9 32. Petitioner has no administrative remedies to exhaust.

10 33. Petitioner has not received any custody redetermination and has not been provided with a
11 bond hearing before an Immigration Judge, thereby depriving him of any meaningful
12 opportunity to seek release from detention.
13

14 34. As such, Petitioner's continued detention in ICE custody cannot be meaningfully
15 challenged through existing immigration court procedures, as he has not been provided
16 access to a bond hearing or any individualized custody determination.

17 35. Furthermore, on or about January 13, 2026, Chief Immigration Judge Teresa L. Riley issued
18 nationwide guidance instructing all immigration judges that: "*Maldonado Bautista* is not a
19 nationwide injunction and does not purport to vacate, stay or enjoin *Yajure Hurtado*."
20 Immigration judges are instructed to treat the BIA's decision in *Matter of Yajure Hurtado* as
21 binding precedent. EOIR guidance further states that a "declaratory judgment" is not
22 binding and lacks authority to compel specific action.³
23

24 36. DHS's discretionary parole authority does not constitute an available or adequate
25 administrative remedy that must be exhausted prior to habeas review. Parole decisions are
26 committed to agency discretion, are not subject to neutral adjudication, and provide no
27

28 ³ See <https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista>

1 mechanism for Petitioner to challenge the legality of his detention. Courts have consistently
2 held that discretionary parole is not an exhaustion prerequisite to habeas corpus relief.

3 37. Therefore, Petitioner has been categorically denied access to any administrative custody
4 review, and no adequate alternative remedy exists; exhaustion is either satisfied or excused
5 as futile. A *writ of habeas corpus* is the sole avenue to vindicate Petitioner's constitutional,
6 statutory, and regulatory rights and to restore his liberty.
7

8 LEGAL FRAMEWORK

9 38. The INA prescribes three basic forms of detention for noncitizens in removal proceedings.
10 First, 8 U.S.C. § 1226(a) authorizes the detention of noncitizens in standard, non-expedited
11 removal proceedings before an Immigration Judge. *See* 8 U.S.C. § 1226(a); 8 U.S.C. §
12 1229a. Individuals in section 1226(a) detention are entitled to a bond hearing at the outset
13 of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been
14 arrested, charged with, or convicted of certain crimes are subject to mandatory detention,
15 *see* 8 U.S.C. § 1226(c).
16

17 39. Second, the INA provides for mandatory detention of noncitizens subject to expedited
18 removal under 8 U.S.C. § 1225(b)(1), as well as for other arriving noncitizens seeking
19 admission who are referred under 8 U.S.C. § 1225(b)(2).
20

21 40. Finally, the Act also provides for the detention of noncitizens who have previously been
22 ordered removed, including those in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)–
23 (b).
24

25 41. The detention provisions at section 1226(a) and 1225(b)(2) were enacted as part of the
26 Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996, Pub. L.
27 No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585.
28

1 Section 1226(c) was most recently amended earlier this year by the LRA, Pub. L. No. 119-
2 1, 139 Stat. 3 (2025).

3 42. Following enactment of IIRIRA, the Executive Office for Immigration Review drafted new
4 regulations explaining that, in general, people who entered the country without inspection
5 were not considered detained under section 1225 but were instead detained under section
6 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of
7 Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323
8 (Mar. 6, 1997). In the decades that followed, most noncitizens who entered without
9 inspection—unless they were subject to some other detention authority—received bond
10 hearings. This practice was also consistent with pre-IIRIRA procedure, in which noncitizens
11 not deemed “arriving” were entitled to a custody hearing before an Immigration Judge or
12 other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* *H.R. Rep. No. 104-469*, pt. 1,
13 at 229 (1996) (noting that section 1226(a) simply “restates” the detention authority
14 previously found at section 1252(a)).
15

16
17 43. On July 8, 2025, DHS issued a memo to all employees of Immigration and Customs
18 Enforcement stating that “[t]his message serves as notice that DHS, in coordination with
19 the Department of Justice (DOJ), has revisited its legal position on detention and release
20 authorities. DHS has determined that section 235 of the Immigration and Nationality Act
21 (INA) [8 U.S.C. § 1225], rather than section 236 [8 U.S.C. § 1226], is the applicable
22 immigration detention authority for all applicants for admission. The following interim
23 guidance is intended to ensure immediate and consistent application of the Department’s
24 legal interpretation while additional operational guidance is developed.” The memo further
25 stated DHS’ new position with regard to custody determinations as follows:
26

27 An “applicant for admission” is an alien present in the United States who has
28 not been admitted or who arrives in the United States, whether or not at a

designated port of arrival. INA § 235(a)(1). Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole. These aliens are also ineligible for a custody redetermination hearing (“bond hearing”) before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that “arriving aliens” have historically been treated.

The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).

Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (“OPLA”) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286. *See* <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authorityfor-applications-for-admission> (last accessed August 4, 2025) (emphasis original).

44. As a result, DHS now considers all noncitizens who have entered the United States without inspection and are subject to the grounds of inadmissibility, including longtime U.S. residents, are now considered to be subject to mandatory detention under section § 1225(b) and ineligible for release on bond. Conversely, according to DHS “[t]he only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) [8 U.S.C. § 1226(a)] during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. § 1226(c)].” *Id.*

45. The BIA issued a precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that, based on the plain language of 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests or to grant bond to noncitizens who are present in the United States without admission.

COUNT I: UNLAWFUL DETENTION IN VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT (“INA”) AND IMPLEMENTING REGULATIONS

46. Petitioner re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

47. The Immigration and Nationality Act authorizes immigration detention only when it serves a legitimate statutory purpose—namely, to ensure an individual’s appearance at future proceedings or to protect public safety. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Clark v. Martinez*, 543 U.S. 371, 381 (2005). Detention that does not advance those purposes, or that becomes arbitrary and indefinite, exceeds the government’s statutory authority.

48. Petitioner is a citizen and national of Turkey who entered the United States on or about April 15, 2023, near San Ysidro, California, and was placed into removal proceedings under section 240 of the Immigration and Nationality Act. Petitioner’s removal proceedings remain pending.

49. Petitioner has no criminal convictions and no record of violence, and has never exhibited conduct suggesting danger to the community or risk of flight. Nothing in his immigration file indicates that he poses a threat to public safety or that he would fail to appear for his hearings if released.

50. Petitioner has been detained continuously since May 24, 2026. Petitioner was arrested by Immigration and Customs Enforcement (‘ICE’) during an operation conducted in a public area and transferred to Otay Mesa Detention Center, Calzada De La Fuente, San Diego, CA.

51. Although Petitioner may seek bond redetermination under existing procedures, such efforts are futile due to current immigration policies and precedents, including the Immigration Court’s lack of jurisdiction for meaningful custody review pursuant to *Matter of Yajure*

1 *Hurtado*, 29 I&N Dec. 216 (BIA 2025). These policies impose blanket restrictions, preclude
2 individualized assessments, and ignore case-specific changes, rendering any
3 redetermination illusory and likely to be denied without substantive consideration.
4 Consequently, Petitioner remains in indefinite detention without a genuine opportunity for
5 release, violating procedural due process and highlighting systemic flaws for similarly
6 situated individuals.
7

8 52. Petitioner has not received any individualized custody determination, and no Immigration
9 Judge has evaluated his custody status.

10 53. As a result, Petitioner has no meaningful administrative mechanism for custody review,
11 effectively subjecting him to prolonged and potentially indefinite detention without
12 statutory authority or procedural safeguards.
13

14 54. The INA does not authorize the indefinite detention of a noncitizen in pending section 240
15 proceedings who poses no danger or flight risk and who has never received a custody
16 hearing before a neutral decisionmaker. *See Zadvydas*, 533 U.S. at 690–91; *Clark*, 543 U.S.
17 at 380–81.
18

19 55. Petitioner’s continued confinement serves no legitimate statutory purpose. His detention
20 bears no reasonable relation to ensuring his appearance or protecting public safety, and it is
21 not tied to any imminent removal, particularly while his removal proceedings remain
22 pending.
23

24 56. Petitioner’s ongoing detention—without individualized assessment, without lawful
25 statutory justification, and without any ability to seek review—exceeds the narrow
26 detention authority granted by Congress and violates controlling Supreme Court precedent.

27 57. Accordingly, Petitioner’s continued detention is unlawful under the Immigration and
28 Nationality Act, its implementing regulations, and governing constitutional principles.

Petitioner respectfully requests that this Court order him immediate release, or, in the alternative, require the government to provide a constitutionally adequate custody hearing before an Immigration Judge with authority to order release on bond.

COUNT II: VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH
AMENDMENT TO THE U.S. CONSTITUTION

58. Petitioner re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

59. The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. Noncitizens physically present in the United States—including those who entered without inspection—are entitled to full procedural due process protections. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982).

60. Petitioner is a citizen and national of Turkey who entered the United States on April 15, 2023, near San Ysidro, California, and was placed into removal proceedings under section 240 of the Immigration and Nationality Act. Petitioner's removal proceedings remain pending.

61. Petitioner has no criminal convictions and no record of violence, and has never exhibited conduct suggesting danger to the community or risk of flight, and has consistently cooperated with immigration authorities since his apprehension.

62. Petitioner has been detained continuously since May 24, 2026, when he was taken into ICE custody during an operation conducted in a public area, and transferred to the Otay Mesa Detention Center, Calzada De La Fuente, San Diego, CA.

63. Although Petitioner may seek bond redetermination under existing procedures, such efforts are futile due to current immigration policies and precedents, including the Immigration Court's lack of jurisdiction for meaningful custody review pursuant to *Matter of Yajure*

1 *Hurtado*, 29 I&N Dec. 216 (BIA 2025). These policies impose blanket restrictions, preclude
2 individualized assessments, and ignore case-specific changes, rendering any
3 redetermination illusory and likely to be denied without substantive consideration.
4 Consequently, Petitioner remains in indefinite detention without a genuine opportunity for
5 release, violating procedural due process and highlighting systemic flaws for similarly
6 situated individuals.
7

8 64. Petitioner has not received any bond hearing or individualized custody determination before
9 an Immigration Judge.

10 65. As a result, Petitioner has been categorically barred from receiving a hearing before a
11 neutral adjudicator to determine whether his detention is justified. He has been denied the
12 opportunity to present evidence, contest the government's assertions, or obtain a meaningful
13 review of his custody.
14

15 66. Immigration detention implicates a fundamental liberty interest. Prolonged detention
16 without a meaningful opportunity to challenge confinement violates the core due process
17 guarantees of notice, the right to be heard, and adjudication by a neutral decisionmaker.
18

19 67. The government's reliance on a categorical jurisdictional bar to deny Petitioner any
20 opportunity for individualized review contravenes these constitutional protections and
21 results in arbitrary, unjustified, and indefinite detention.

22 68. Accordingly, Petitioner's continued incarceration without an individualized custody
23 determination violates the Due Process Clause of the Fifth Amendment. Habeas relief is
24 warranted to remedy these constitutional violations by ordering his immediate release or, in
25 the alternative, requiring a prompt and constitutionally adequate bond hearing before a
26 neutral adjudicator with authority to grant release.
27

28 **COUNT III: VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT –**

ARBITRARY AND CAPRICIOUS AGENCY ACTION

69. Petitioner re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

70. The Administrative Procedure Act (“APA”), 5 U.S.C. § 706(2), requires courts to “hold unlawful and set aside” agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Under this standard, an agency must articulate a rational connection between the facts found and the choices made, and it must provide an adequate explanation for its actions consistent with statutory authority. See *Judulang v. Holder*, 565 U.S. 42, 55 (2011).

71. The Department of Homeland Security has acted arbitrarily and capriciously in continuing to detain Petitioner without any individualized justification. Petitioner has no known criminal convictions based on available information, has not engaged in violence or dangerous behavior, and has consistently cooperated with immigration authorities since being taken into ICE custody.

72. Despite these facts, DHS has maintained Petitioner’s detention for an extended and potentially indefinite period without providing any reasoned explanation or evidence that continued confinement serves a legitimate statutory purpose. DHS has failed to articulate why release under supervision, bond, or other alternatives would be insufficient.

73. DHS’s reliance on *Matter of Yajure Hurtado* to justify continued detention is arbitrary and contrary to law. *Yajure Hurtado* addresses the jurisdiction of Immigration Judges to conduct bond hearings. It does not compel DHS to detain noncitizens indefinitely, nor does it eliminate DHS’s longstanding discretionary authority to release noncitizens on parole, recognizance, supervision, or bond.

1 74. By treating *Yajure Hurtado* as an absolute bar to any form of custody review or
2 discretionary release, DHS has effectively adopted a blanket detention policy that
3 substitutes categorical rules for the individualized determinations required under the
4 Immigration and Nationality Act.

5
6 75. DHS has not conducted any meaningful custody assessment of Petitioner, nor has it
7 provided a rational explanation for refusing to exercise discretion in his case. Petitioner's
8 lack of criminal convictions, his cooperation with authorities, his pending applications for
9 asylum, withholding of removal, and protection under the Convention Against Torture, and
10 his eligibility for alternatives to detention demonstrate arbitrary and capricious decision-
11 making.

12
13 76. DHS's actions are inconsistent with the statutory purpose of civil immigration detention,
14 which is limited to ensuring appearance at future proceedings and protecting public safety.
15 Petitioner's continued confinement does not advance either purpose.

16 77. DHS has therefore acted in a manner that is arbitrary, capricious, an abuse of discretion,
17 and not in accordance with law. Its continued detention of Petitioner must be set aside under
18 5 U.S.C. § 706(2)(A).

19
20 78. Habeas relief is warranted to remedy this unlawful agency conduct. Petitioner respectfully
21 requests that this Court order his immediate release or, in the alternative, direct DHS to
22 provide a constitutionally adequate and reasoned custody determination consistent with the
23 requirements of the Administrative Procedure Act and the Immigration and Nationality Act.

24 **COUNT IV: VIOLATION OF THE EQUAL PROTECTION GUARANTEE OF THE**
25 **FIFTH AMENDMENT**

26 79. Petitioner re-alleges and incorporates by reference the preceding paragraphs as though fully
27 set forth herein.
28

1 80. The Due Process Clause of the Fifth Amendment contains an implicit guarantee of equal
2 protection that prohibits the federal government from treating similarly situated individuals
3 differently without a rational and legitimate governmental purpose. *Reno v. Flores*, 507
4 U.S. 292, 302 (1993); *Plyler v. Doe*, 457 U.S. 202, 210 (1982); *Bolling v. Sharpe*, 347 U.S.
5 497, 499 (1954).
6

7 81. Petitioner is placed in removal proceedings under section 240 of the Immigration and
8 Nationality Act, a statutory framework under which noncitizens ordinarily receive an
9 individualized custody determination before an Immigration Judge pursuant to section
10 236(a).
11

12 82. Petitioner is a citizen and national of Turkey who entered the United States on or about
13 April 15, 2023, near San Ysidro, California, has no known criminal convictions based on
14 available information, and no record of violence or dangerous behavior. He has cooperated
15 fully with immigration authorities since entering ICE custody.

16 83. Despite being similarly situated to other § 240 respondents, Petitioner has been
17 categorically denied access to any bond hearing without any individualized custody
18 determination or access to a hearing before an Immigration Judge.
19

20 84. Although Petitioner may seek bond redetermination under existing procedures, such efforts
21 are futile due to current immigration policies and precedents, including the Immigration
22 Court's lack of jurisdiction for meaningful custody review pursuant to *Matter of Yajure*
23 *Hurtado*, 29 I&N Dec. 216 (BIA 2025). These policies impose blanket restrictions, preclude
24 individualized assessments, and ignore case-specific changes, rendering any
25 redetermination illusory and likely to be denied without substantive consideration.
26 Consequently, Petitioner remains in indefinite detention without a genuine opportunity for
27
28

1 release, violating procedural due process and highlighting systemic flaws for similarly
2 situated individuals.

3 85. The government's treatment of Petitioner creates an unjustifiable disparity between his and
4 similarly situated detainees who receive individualized bond hearings. The Fifth
5 Amendment prohibits the government from treating similarly situated persons differently
6 without a rational basis. *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000); *Bolling*
7 *v. Sharpe*, 347 U.S. 497, 499 (1954).
8

9 86. DHS's actions in continuing to detain Petitioner without providing access to any
10 individualized custody determination—despite his placement in § 240 proceedings—lack a
11 rational connection to any legitimate governmental purpose. Disparate treatment in the
12 absence of any individualized assessment is arbitrary and not rationally related to the goals
13 of ensuring appearance or protecting public safety. See *Zadvydas*, 533 U.S. at 690 (civil
14 detention must relate to its permissible purposes).
15

16 87. Moreover, federal courts have recognized that immigration detention classifications must
17 comport with fundamental fairness and may not be applied in an arbitrary or discriminatory
18 manner. See *Ly v. Hansen*, 351 F.3d 263, 271–73 (6th Cir. 2003) (immigration detention
19 must bear a reasonable relationship to its purpose, and prolonged detention without
20 individualized review violates due process); *Hamama v. Adducci*, 912 F.3d 869, 875–80
21 (6th Cir. 2018) (recognizing habeas jurisdiction over civil-immigration-detention
22 challenges); see also *Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011) (government
23 must justify detention with individualized evidence); *Rodriguez v. Robbins*, 804 F.3d 1060,
24 1074–76 (9th Cir. 2015) (due process prohibits prolonged detention without meaningful
25 review).
26
27
28

1 88. DHS has provided no individualized or rational explanation for why Petitioner, unlike
2 others in the same statutory posture, is denied access to an individualized custody
3 determination. This unequal treatment violates the equal protection component of the Fifth
4 Amendment.

5
6 89. Petitioner's continued incarceration under a discriminatory and arbitrary detention
7 classification violates constitutional guarantees of equal protection and further underscores
8 the unreasonableness and unlawfulness of his confinement.

9 90. Habeas relief is therefore warranted to remedy this unconstitutional disparate treatment by
10 ordering Petitioner's immediate release or, in the alternative, directing DHS to provide him
11 with the same procedural protection and individualized custody review available to
12 similarly situated noncitizens.

13
14 **COUNT V: VIOLATION OF THE SUSPENSION CLAUSE OF THE UNITED**
15 **STATES CONSTITUTION**

16 91. Petitioner re-alleges and incorporates by reference all preceding paragraphs as though fully
17 set forth herein.

18 92. The Suspension Clause of the United States Constitution provides that "[t]he Privilege of
19 the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or
20 Invasion the public Safety may require it." U.S. Const. art. I, § 9, cl. 2. The Clause
21 guarantees the availability of judicial review to challenge the lawfulness of executive
22 detention. *Boumediene v. Bush*, 553 U.S. 723, 745–46 (2008); *INS v. St. Cyr*, 533 U.S. 289,
23 300–05 (2001).

24
25 93. Habeas corpus remains available to all persons in the United States who are detained by
26 executive authority, including noncitizens in civil immigration custody. The Supreme Court
27
28

1 has made clear that Congress may not eliminate all avenues of meaningful judicial review
2 of the legality of detention. *St. Cyr*, 533 U.S. at 305–06.

3 94. Petitioner is detained solely under civil immigration authority and is currently confined at
4 the Otay Mesa Detention Center located at 7488 Calzada De La Fuente, San Diego, CA
5 92154. He has no criminal convictions, no history of violence, and his removal proceedings
6 remain pending.
7

8 95. Petitioner has not received any bond hearing or individualized custody determination. He
9 has therefore been denied access to the custody redetermination process ordinarily available
10 to noncitizens in § 240 proceedings.

11 96. Because Petitioner has not been provided any opportunity to seek custody review before an
12 Immigration Judge, he has no administrative pathway to challenge the legality, length, or
13 necessity of his detention. ICE has likewise provided no discretionary parole review or case-
14 specific custody assessment.
15

16 97. As a result, no alternative remedy exists outside of habeas corpus through which Petitioner
17 may obtain judicial review of the legality of his confinement. Neither the Immigration
18 Courts nor the Board of Immigration Appeals (“BIA”) possesses jurisdiction to review
19 custody challenges arising from DHS’s classification decisions.
20

21 98. The Suspension Clause forbids the government from implementing a detention scheme that
22 eliminates all meaningful opportunity for detainees to test the legality of their confinement.
23 *Boumediene*, 553 U.S. at 779 (“The writ must be effective.”). When no adequate and
24 effective substitute exists, habeas review is constitutionally required. *St. Cyr*, 533 U.S. at
25 305.

26 99. Petitioner’s detention—prolonged, indefinite, and wholly insulated from individualized
27 review—implicates the core protections of the Suspension Clause. Without habeas corpus,
28

Petitioner would have no judicial or administrative mechanism to contest the legality of his civil confinement.

100. The government's application of *Matter of Yajure Hurtado* to categorically bar all custody review, therefore, violates the Suspension Clause by depriving Petitioner of an effective and constitutionally required means to challenge unlawful detention. Unlike the arriving alien in *DHS v. Thuraissigiam*, 591 U.S. 103, 138–40 (2020), Petitioner has been physically present in the United States for more than three years and is therefore squarely within the class of persons whose Suspension Clause rights the Court has repeatedly affirmed. See *id.* at 138–39 (distinguishing aliens "who have entered the country" from those stopped at the border); *Boumediene*, 553 U.S. at 739.

101. Accordingly, habeas corpus relief is required. Petitioner respectfully requests that this Court order his immediate release or, in the alternative, direct Respondents to provide him with a prompt, meaningful, and individualized custody hearing before a neutral adjudicator with authority to grant release.

COUNT VI: VIOLATION OF THE ACCARDI DOCTRINE WITH RESPECT TO 8

C.F.R. § 287.8(C)(2)(I) AND (II)

102. Petitioner repeats and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

103. The United States has also failed to follow immigration-specific arrest and processing regulations. Regulations governing immigration enforcement require that warrantless arrests comply with the standards set forth in 8 C.F.R. § 287.8(c). Specifically, for any arrest, immigration officers must have reason to believe that an individual committed an offense against the United States or was present in the United States illegally. 8 C.F.R. § 287.8(c)(2)(i). And, for a warrantless arrest, officers must also have reason to

1 believe that an individual is "likely to escape before a warrant can be obtained." 8 C.F.R. §
2 287.8(c)(2)(ii).

3 104. At the time he was taken into ICE custody on May 24, 2026, Petitioner was taken
4 into custody during an ICE operation that was conducted in a public area and Petitioner had
5 complied with all immigration requirements, including appearing for his immigration
6 proceedings and remaining available to immigration authorities. Petitioner was taken into
7 ICE custody at that time.
8

9 105. Petitioner was not evading law enforcement, was not subject to any criminal
10 investigation, posed no danger to any person or to the community, and presented no risk of
11 flight. There was no factual basis to conclude that Petitioner was likely to escape before a
12 warrant could be obtained. Therefore, Petitioner's warrantless immigration arrest and
13 continued detention contravene the governing immigration arrest regulations and violate the
14 Accardi doctrine, which requires agencies to follow their own binding regulations. *See*
15 *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266–68 (1954); *Morton v. Ruiz*,
16 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent
17 upon agencies to follow their own procedures.").
18

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Petitioner respectfully requests that this Court grant the following:
21

- 22 1. Assume jurisdiction over this matter;
- 23 2. Pursuant to 28 U.S.C. § 2243, issue an order to show cause directing Respondents to
24 file a return within three (3) days, absent good cause for a short extension not exceeding
25 ten days, and set the matter for a prompt hearing;
- 26 3. Enjoin Respondents from transferring Petitioner during the pendency of the instant
27 action;
28

- 1 4. Declare that Petitioner's continued detention violates the Immigration and Nationality
- 2 Act, 8 U.S.C. § 1226(a); the Administrative Procedure Act, 5 U.S.C. § 706(2)(A); and/or
- 3 the Due Process Clause of the Fifth Amendment to the U.S. Constitution;
- 4
- 5 5. Grant the *writ of habeas corpus* and order Petitioner's immediate release from ICE
- 6 custody; In the alternative, order a constitutionally adequate bond hearing at which DHS
- 7 bears the burden of proving that Petitioner is a danger to the community or risk of flight,
- 8 or reasonable conditions of supervision.
- 9
- 10 6. Award Petitioner his costs and reasonable attorneys' fees pursuant to the Equal Access
- 11 to Justice Act, 28 U.S.C. § 2412, and any other applicable authority; and
- 12 7. Grant any other further relief this Court deems just and proper.
- 13

14 Dated: June 8, 2026

Respectfully Submitted,

15 /s/ Cynthia Bautista

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20 cbautista@bautista-law.com
Attorney for Petitioner

1	<u>EXHIBIT</u>		
2	EXHIBIT A	NOTICE TO APPEAR	02 – 04
3	EXHIBIT B	FORM I-830	06 – 06
4	EXHIBIT C	USCIS-I-589 RECEIPT	08 – 08
5	EXHIBIT D	EOIR NATIONWIDE GUIDANCE	10 - 10
6	EXHIBIT E	BIA YAJURE HURTADO -	
7		MOTION TO RECONSIDER	12 - 44
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, SERHAT ERTUGRUL, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for *Writ of Habeas Corpus* are true and correct to the best of my knowledge.

Dated: June 8, 2026

/s/ Cynthia Bautista
Cynthia Bautista

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2026, I filed the foregoing petition for Writ of Habeas Corpus electronically through the CM/ECF system, which caused all parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

Dated: June 8, 2026

/s/ Cynthia Bautista
Cynthia Bautista